

AS



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,964	02/21/2003	Eileen C. Fuchs	112843-037	6252
29157	7590	02/24/2004	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 02/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

10/019,964

### Applicant(s)

FUCHS ET AL.

### Examiner

Helen F. Pratt

### Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachler et al. (4,720,390) in view of Kadan et al. and Food Values - JELLO (TRADEMARK) and Schneiderwirth (2,487,600).

Bachler et al. disclose a thermally gelled emulsion, which can be a jelly, which contains 80% proteins and raspberry syrup (abstract and col. 11, lines 65-70 and col. 12, lines 1-10). The composition is seen to be a clear gel as in claim 31, because gels are generally clear except for their coloring as in JELLO (TRADEMARK). Claim 30 and 37 differs from the reference in the particular amount of carbohydrate to provide from 60 to 95% of the energy of the composition and in the addition of vitamins or minerals. However, Kadan et al. disclose that it is known to make a flan-type pudding with whey protein isolate which contains sucrose (carbohydrate) in amounts of 9.3%, which is within the claimed range (abstract and col. 6, lines 58-66). Also, JELLO <sup>TM</sup> contains 19 grams of carbohydrate (Food value, page 58). Schneiderwirth discloses that it is known to add vitamins to a gelled composition (col. 1, lines 20-30). Therefore, it would have been obvious to increase the carbohydrate as taught by Kadan et al. and JELLO <sup>TM</sup> in the composition of Bachler et al. for its known function of adding calories and to add vitamins or minerals to a composition as shown by Schneiderwirth.

Art Unit: 1761

Claim 32 further requires that the composition contain vitamins and minerals in particular amounts. Bachler et al. disclose that the composition can contain mineral salts. The addition of vitamin C of JELLO (TRADEMARK) is well known. Also, Schneiderwirth discloses the addition of vitamins or minerals to a gelled product, as above. No criticality is seen in the addition of the vitamins or minerals, as only the bare addition of the vitamins or minerals is required. Therefore, it would have been obvious to add vitamins and minerals to a gelled composition as they are commonly added to foods.

Claims 33 and 35 requires that the energy density is a particular amount and claim 34 that the viscosity is within a particular degree. However, it would have been within the skill of the ordinary worker to make a composition with a particular energy density, as this involves adding such types of ingredients as shown above. It is not seen that the particular viscosity is not within the claimed range (col. 11, lines 65-70 of Bachler et al). Therefore, it would have been obvious to make a composition with a particular energy density and viscosity and with the addition of vitamins and minerals as shown by the above references.

Claim 35 requires that the carbohydrate source provide most of the energy of the composition. However, as in Kadan et al. and JELLO, TM it is known to make a gelled composition with the calories coming mostly from carbohydrates. Therefore, it would have been obvious to make a composition with the calories coming from carbohydrates.

Claim 36 further requires that the pH is 3.5 to 4.1. Bachler et al. disclose in Example 10 that it is known to adjust the pH of a whey protein concentrate containing

Art Unit: 1761

composition with citric acid to 3.3 (col. 12, lines 15-37). Therefore, it would have been obvious to adjust the pH in the Jelly composition if required as shown by Bachler et al.

Claim 38 further requires the addition of vitamins and minerals from 30-100% of the RDA. However, as above nothing new is seen in the addition of such, as foods are routinely fortified with vitamins and minerals, and nothing critical is seen in the addition of vitamins and minerals.

The limitations of claim 39 as to energy density, claim 40 as to viscosity, claim 41 as to energy and 42 as to pH have been discussed above and further claims 43-46 and are obvious variations of the above claims.

Claim 47 is to a method of providing the above composition to a dysphagia patient and claim 54 to a child. However, it is well known to give gelled compositions to a child, hence the small 6 pack of child size portions, which are commonly found in the grocery store. It would have been within the skill of the ordinary worker to try different foods to see what a patient with dysphagia could tolerate. The further limitations of claims 48-53 have been discussed above and are obvious for those reasons.

Therefore, it would have been obvious to give the claimed composition to dysphagia patients and children for its nutritive content.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 2-9-04

*H. Pratt*  
HELEN PRATT  
PRIMARY EXAMINER